



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JOHN B. AND BEVERLY A. SIMPSON)

For Appellants: Richard B. Bowden, Jr.
Attorney at Law

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of John B. and Beverly A. Simpson for refund of personal income tax in the amount of \$351.88 for the year 1971.

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The sole issue presented by this appeal is whether appellant.^{1/} was a California resident during 1971.

On October 27, 1970, appellant, who was a California resident working as an engineer for Philco-Ford Corporation in Palo Alto, California, left for Australia on assignment by his company. The project to which appellant was assigned was a joint undertaking of Philco-Ford, Australia, and the United States Government. Appellant's travel authorization form indicated that his job would be "[t]o supervise the development, validation, and verification of operations and maintenance procedures at OGS." The form also indicated the approximate duration of the assignment to be 365 days. Appellant's assignment was extended while he was in Australia and he did not actually return to California until May 8, 1972. With the exception of a one day visit to California in September of 1971, all of appellant's time between October 27, 1970, and May 8, 1972, was spent outside of California.

Prior to his departure from California in 1970; appellant sold one of the two family automobiles and relinquished his commission as an officer in the California Air National Guard. During appellant's absence, his wife and two children continued to live in the family home in Palo Alto, California, where most of his personal property remained. Appellant and his wife maintained joint checking and savings accounts in California during his absence. With the exception of interest in the amount of \$19.47 on the aforementioned California savings account, all of appellant's, 1971 income was earned abroad. While in Australia, appellant lived in an apartment on a month-to-month rental basis. He also opened a checking account there and joined a dining club.

For the taxable year 1971, appellants filed a joint personal income tax return as California residents and paid taxes of \$351.88. Subsequently, they each filed an amended separate return. Appellant husband's amended return indicated no California income tax due on the basis that he had been a nonresident during

^{1/} Unless otherwise specified, all references to "appellant" in this opinion are to appellant husband.

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the year in question, whereas appellant wife's return included one half of the income earned by her husband during 1971 and showed a tax liability of \$183.00. With these amended returns, appellants filed a claim for refund in the amount of \$351.88. That claim was denied by respondent and appellants filed this appeal.

Section 17,041 of the Revenue and Taxation Code provides that taxes shall be imposed upon the entire taxable income of all California residents. "Resident" is defined in section 17014 of the Revenue and Taxation Code as:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

Mrs. Simpson admittedly remained a California domiciliary and resident throughout the period in issue. Appellant's status as a California domiciliary is, likewise, undisputed. The only question remaining is whether his absence from the state during 1971 was for a temporary or transitory purpose. If it was, appellant remained a California resident for income tax purposes throughout the period of his absence.

The term "temporary or transitory purpose" is discussed in regulation 17014-17016(b) of title 18 of the California Administrative Code, which provides, in pertinent part:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which- will require

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his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

If, however, an individual is in this State. .. for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, ... he is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income. ...

Although this regulation speaks in terms of whether or not an individual's presence in California is for a temporary or transitory purpose, it may also be applied in considering the purpose of a domiciliary's absence from California. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968; Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968.)

Appellant contends that he was a nonresident of California during 1971 by virtue of his absence from this state during that year for other than a temporary or transitory purpose. Appellant states that when he was assigned to Australia it was his understanding that the assignment would last indefinitely. Had this not been his understanding, appellant alleges, he would neither have sold his automobile nor resigned his commission in the Air National Guard, since these actions were to his "substantial financial detriment." Additional factors relied on by appellant to support his contention are the contacts he maintained in Australia while there and the fact that he spent the majority of 1971 outside California.

The only evidence in the record relating to the purpose and length of appellant's Australian assignment is the travel authorization form filed by his employer prior to appellant's departure for Australia in 1970. It listed the purpose of the assignment to be "[t]o supervise the development, validation, and verification of operations and maintenance procedures at OGS" and the approximate duration of the assignment to be "365"

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days. In the past, where assignments were made in general terms such as these, we have determined that the employees therein could not have anticipated an absence of indefinite duration, (See Appeal of Benjamin B. Ben Amy, Cal. St. Bd. of Equal. , Oct. 1, 1963; Appeal of Harry A. and Audrey Cheney, Cal. St. Bd. of Equal., Dec. 13, 1961.) We see no reason not to follow this approach in the instant case.

With respect to the sale of appellant's automobile, respondent's investigation disclosed that appellant actually junked the 1953 model car for \$165.00, hardly an action which could be construed as being to his "substantial financial detriment. " Respondent also discovered that under California Air National Guard rules, attendance at ninety percent of all guard meetings each year is mandatory to continued membership. Thus, an anticipated absence for a period much shorter than even a year would have required appellant's resignation. In view of respondent's disclosures, these two actions taken by appellant are not highly persuasive of an anticipated absence of indefinite duration.

Finally, we recognize that appellant spent the majority of 1971 away from California, and that he did establish a few connections in Australia while he was there. Upon consideration of all the facts in the instant case, however, we are still not persuaded that appellant's absence from California during 1971 was for other than a temporary or transitory purpose. It follows that he remained a California resident throughout the period in issue. In reaching this conclusion, we were particularly impressed by the substantial connections appellant maintained with California throughout his absence, i.e., the presence in this state of his wife and children, a home, most of his personal belongings, and several bank accounts. These connections are inconsistent with an absence of indefinite or permanent duration. (See Appeal of Nathan H. and Julia M. Juran, supra.) Furthermore, by maintaining these ties appellant received the protection and benefits of California laws and government, which are additional factors indicative of residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

Based upon the foregoing, respondent's determination in this matter must be sustained.

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ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of John B. and Beverly A. Simpson for refund of personal income tax in the amount of \$351.88 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 19 day of August 1975, by the State Board of Equalization.

John W. Lynch, Chairman
William B. Benson, Member
George J. Kelley, Member
Robert K. Kline, Member
_____, Member

ATTEST: W. W. Simpson, Executive Secretary